

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA

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| In the Matter of |) | |
| |) | |
| DAVID WILBIRT, M.D. |) | |
| |) | |
| Holder of License No. 9920 |) | CONSENT AGREEMENT |
| For the Practice of Medicine |) | TO LETTER OF REPRIMAND |
| In the State of Arizona. |) | |
| |) | |
| Re: BOMEX Inquiry (02-13-97) v. David |) | |
| Wilbirt (Inv. #10648) |) | |
| BOMEX Inquiry (05-14-97) v. David |) | |
| Wilbirt (Inv. #10948) |) | |
| _____ |) | |

DAVID WILBIRT, M.D., holder of License No. 9920 for the practice of medicine in the State of Arizona, and the Arizona Board of Medical Examiners ("Board") hereby agree as follows:

1. Pursuant to A.R.S. §32-1451(F)(5), Dr. WILBIRT agrees that the Board shall adopt the Letter of Reprimand, Findings of Fact, Conclusions of Law, and Order attached to this Consent Agreement and incorporated by this reference. The Letter of Reprimand shall be effective on the date written on the letter. Dr. DINGLE agrees that the Board has substantial evidence in support of the Findings of Fact and Conclusions of Law. He agrees not to contest the accuracy of the Findings of Fact and Conclusions of Law.

2. By entering into this Consent Agreement, Dr. WILBIRT freely and voluntarily relinquishes all right to an Informal Interview before the Board, a hearing before a hearing officer and before the Board, and relinquishes all right of rehearing, review, reconsideration, appeal, judicial review or any other judicial action concerning the matters set forth herein. Dr. WILBIRT affirmatively agrees that the Letter of Reprimand shall be irrevocable.

Dr. Wilbirt in response to his newspaper advertisement about a weight reduction program. D.S.'s records note that she was interested in weight loss. D.S.'s height was 5'6" and her weight was 150lbs. Dr. Wilbirt's assessment was obesity. Dr. Wilbirt prescribed Redux 50mg PO bid and gave D.S. an appointment for a revisit in 10 days.

4. On January 29, 1997, two letters were sent by Dr. Wilbirt to D.S. One letter reminds D.S. that Dr. Wilbirt would like to see her in 10 days for a follow-up appointment. The other letter states that Dr. Wilbirt had reviewed D.S.'s medical records and that she was not a candidate for the Redux weight loss program. This letter further instructed D.S. not to fill the prescription and to return to the office if she wished to discuss weight monitoring only. There were also notes in D.S.'s chart stating "Call patient to stop the medication," and "Send letter to patient to stop medication."

5. Patient J.L., a 19 year old female was seen by Dr. Wilbirt on 1-29-97. It is noted in her records that she was interested in weight loss. J.L.'s height appears to be recorded as 5'11" and her weight was 122lbs. Dr. Wilbirt conducted a cursory examination of the patient and assessed J.L. as being obese. Dr. Wilbirt prescribed Redux 50mg b.i.d. and advised her to use the medication for maintenance only and to follow-up in 10 days.

6. A subsequent note in J.L.'s chart indicates that Dr. Wilbirt reviewed her records and sent a letter not to take the medication.

7. Patient V.H., a 28 year old female was seen by Dr. Wilbirt on 1-28-97. It is noted in her records that she was interested in weight loss. V.H.'s height was 5'0" and her weight was 102lbs. A history and examination was completed on V.H. and it was noted that the patient was mildly obese. Dr. Wilbirt prescribed Redux 50mg b.i.d. noting the medications were for maintenance and that she come back for a follow-up appointment in 10 days.

8. A subsequent note in V.H.'s chart indicates that Dr. Wilbirt sent a letter to the patient not to take the medication.

9. Patient M.H., a female, was seen by Dr. Wilbirt on 5-2-97. M.H.'s height was 5'10 and her weight was 140lbs. M.H. was issued prescriptions for Phentermine and Pondimin for weight control.

10. Patients J.L., V.H. and M.H. were not obese and did not meet the medical qualifications for the Phen Fen diet program and the prescriptions they were issued.

11. Although patient D.S. may be considered mildly obese, there was no history or previous problems recorded of obesity or programs she utilized for weight reduction in the past. Patient D.S. should not have been started on the Phen Fen diet program and given a prescription for Redux.

12. On or about July 25, 1997, several of Dr. Wilbirt's patient charts in addition to patients J.L., V.H., and D.S. were reviewed.

13. Dr. Wilbirt's records do not contain progress notes, the records do not indicate who performed the initial patient evaluations as the charts were neither signed nor initialed, the records do not document adequate histories or examinations on patients with respect to previous problems of obesity or past weight loss methods and some copies of prescriptions written by Dr. Wilbirt are undated.

Conclusions of Law

1. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(25)(j) (prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes).

2. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(25)(e) (failing or refusing to maintain adequate records on a patient).

Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered that David Wilbirt, M.D. be issued a Letter of Reprimand.

DATED this 30th day of July, 1998.

BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA

By Claudia Foutz
CLAUDIA FOUTZ
Executive Director



Jane Dee Hull
Governor

Arizona State Board of Medical Examiners

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Claudia Foutz
Executive Director

Donna Nemer
Deputy Director

Certified Mail/Return Receipt Requested

David Wilbirt, M.D.
(Address of Record)

Re: **LETTER OF REPRIMAND**
BOMEX Inquiry (02-13-97) v. David Wilbirt, M.D.
(Investigation No. 10648)
BOMEX Inquiry (05-14-97) v. David Wilbirt, M.D.
(Investigation No. 10948)

Dear Dr. Wilbirt:

You have agreed in the Consent Agreement attached to this letter that the Arizona Board of Medical Examiners shall resolve the complaints listed above by issuing a Letter of Reprimand to you.

A Letter of Reprimand is defined in A.R.S. § 32-1401(15) as "a disciplinary letter issued by the Board that informs the physician that the physician's conduct violates state or federal law but does not require the Board to restrict the license or monitor the physician because the physician's conduct did not harm a patient or the public."

In voting to issue the Letter of Reprimand, the Board adopted the following Findings of Fact, Conclusions of Law, and Order:

Findings of Fact

1. The Board of Medical Examiners of the State of Arizona is the duly constituted authority for the regulation and control of the practice of medicine in the State of Arizona.
2. David Wilbirt, M.D. is the holder of License No. 9920 for the practice of medicine in the State of Arizona.
3. Patient D.S., a 30 year old female, was seen on 1-28-97 by

3. Dr. WILBIRT has read and understands the Consent Agreement, Letter of Reprimand, Findings of Fact, Conclusions of Law, and Order, and voluntarily enters into this Consent Agreement. Dr. WILBIRT understands that he may consult legal counsel regarding this matter and agrees that he has done so or affirmatively declines to do so.

4. The Consent Agreement, Letter of Reprimand, Findings of Fact, Conclusions of Law and Order, if adopted by the Board, constitute a resolution of the following cases: BOMEX Inquiry (02-13-97) v. David Wilbirt, M.D. (Investigation No. 10648) and BOMEX Inquiry (05-14-97) v. David Wilbirt, M.D. (Investigation No. 10948). The Consent Agreement, Letter of Reprimand, Findings of Fact and Conclusions of Law do not constitute a dismissal or resolution of any other matters currently pending and do not constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any other pending or future investigation, action, or proceeding.

5. The Consent Agreement, Letter of Reprimand, Findings of Fact, Conclusions of Law, and Order shall not become effective until adopted by the Board and signed by the Board's Executive Director.

6. Dr. WILBIRT understands that if the Board does not adopt the Consent Agreement, Letter of Reprimand, Findings of Fact, Conclusions of Law, and Order, the case listed in paragraph 4 above will be decided by the Board pursuant to the Medical Practice Act, A.R.S. § 32-1401 et seq.. Dr. WILBIRT agrees that he will not assert as a defense that the Board's consideration of the Consent Agreement, Letter of Reprimand, Findings of Fact and Conclusions of Law constitutes bias, prejudice, prejudgment or other similar defense.

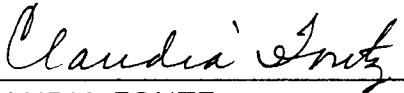
7. The Consent Agreement, Letter of Reprimand, Findings of Fact and Conclusions of Law is a public record and shall be reported as required by law to

the National Practitioner Data Bank and also to the Federation of State Medical Boards.

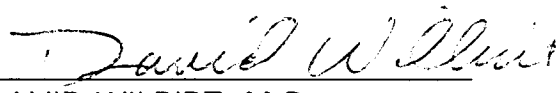
8. The Consent Agreement constitutes the entire agreement of the parties.

9. Any violation of this Consent Agreement or the Letter of Reprimand constitutes unprofessional conduct pursuant to A.R.S. §32-1401(25)(r) (Violating a formal order, probation or stipulation issued or entered into by the board or its executive director under the provisions of this chapter) and may result in disciplinary action pursuant to A.R.S. §32-1451.

BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA


CLAUDIA FOUTZ
Executive Director

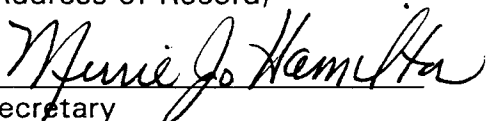
Dated: July 30, 1998


DAVID WILBIRT, M.D.

Dated: 7-16-98

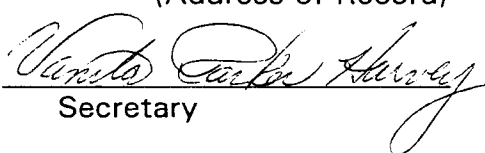
ORIGINAL of the foregoing Consent Agreement to Letter of Reprimand and Copy of Letter of Reprimand mailed by Certified Mail this 6th day of July, 1998 for signature to:

David Wilbirt, M.D.
(Address of Record)


Secretary

COPY of the foregoing **signed** Consent Agreement to Letter of Reprimand and Letter of Reprimand mailed this 30 day of July, 1998 to:

David Wilbirt, M.D.
(Address of Record)


Secretary

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